

6 July 1973

MEMORANDUM FOR: Legislative Counsel

Jack:

1. Attached is a shortened version of [] draft of a report to Senator Stennis on S. 1935.

STATINTL

2. Also, Mr. Colby on several occasions has requested alternative language for possible restrictions on the Agency to be put in legislation. In the letter to Senator Stennis the thought is thrown in of inserting the word "foreign" as Mr. Colby did in his confirmation hearing.

3. Additionally, however, we have attached three other possible variations of language which we believe we could live with. I assume that you will put forward one or more versions of these drafts and possibly other variations which you and your people may develop.

STATINTL

4. Let us know what we can do to help.

[]
JOHN S. WARNER
Acting General Counsel

Atts.

~~SECRET~~

DRAFT

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6 July 1973

Honorable John C. Stennis, Chairman
Committee on Armed Services
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

This is in response to your request of 8 June 1973 for the recommendations of this Agency on S. 1935, "To amend section 102 of the National Security Act of 1947 to prohibit certain activities by the Central Intelligence Agency and to limit certain other activities by such Agency."

In view of the nature of our comments with respect to certain provisions of the bill, we have classified this report Secret.

S. 1935 adds a new subsection to section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403). Based upon the language of the bill and the sponsor's statement when it was introduced, the purpose of the bill is to modify the authority of the National Security Council to proscribe certain functions for this Agency in three areas: (1) internal security functions, (2) illegal domestic activities, and (3) "covert action" abroad.

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Internal Security Functions

The provisions of the bill relating to internal security functions appear in new subsection (g)(1)(A) and (B). According to the sponsor's statement in introducing the legislation on 4 June 1973, these provisions are meant to tighten up the first proviso in subsection 102(d)(3) of the National Security Act of 1947 that the CIA shall have no "police, subpoena, law-enforcement powers, or internal-security functions." The sponsor views the phrase "internal-security functions" as a "blanket disapproval for any active domestic police-type functions." His stated concern is that other provisions in the CIA section of the National Security Act of 1947 can be cited for justifying "operations domestically" and "even domestic operations." In light of this stated concern, it is important to review the meaning of the proviso in question.

(a) The word "powers" in the phrase "police, subpoena, law-enforcement powers" means legal ability or authority. The Agency has no police, subpoena, or law-enforcement powers, has never attempted to exercise such powers, and its legal inability and lack of authority to exercise such powers is abundantly clear.

(b) The meaning of the phrase "internal-security functions" is equally clear when considered in the context of both the legislation in which it appears and the legislative history which surrounds it.

The heart of the Central Intelligence Agency section of the National Security Act of 1947 is subsection 102(d) which sets forth the duties of the Agency under the direction of the National Security Council. The proviso appears in that paragraph of that subsection which deals specifically with the correlation, evaluation, and dissemination of intelligence information.

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The legislative history of section 102 of the National Security Act reflects congressional intent that there be no confusion between the pursuit of intelligence abroad and police powers at home. In 1947 it was very clear that the merging of these two functions was characteristic of totalitarian states. The concern simply put was that there be no "gestapo in the United States." While this country has never had a national police force, experience with the conduct of totalitarian states was uppermost in the nation's mind.

In light of these concerns, a proviso was written into law to add to the assurance that the Agency would not be engaged domestically in collecting information on citizens of the United States who, unlike Agency employees and others having access to our information, are not of legitimate interest to the Agency. The proviso was patterned after the wording in paragraph 4 of the 22 January 1946 Presidential directive which established the Central Intelligence Group, the predecessor organization of the Central Intelligence Agency (i. e., "4. No police, law-enforcement, or internal-security functions shall be exercised under this directive.").

We do not view any of the subsections of 102(d) as authority to override the proscriptions in the proviso that the CIA shall have no police, subpoena, law enforcement powers, or internal security functions. However, neither do we view that proviso as prohibiting this Agency from protecting its installations in the United States, conducting security investigations of its personnel and persons having a need for access to its information, and, of course, engaging in activities in the United States solely to support the Agency's foreign intelligence mission..

It is our view that the functions that can be assigned to this Agency under subsection 102(d) are limited to foreign intelligence activities even while we believe the absence of the word is still justified though the word "foreign" is absent from the subsection. The insertion

SECRET

of the word "foreign" in the subsection would be preferable to (g)(1)(A) and (B) of S. 1935 and would appear to substantially meet the sponsor's objectives. With the word inserted, subsection 102(d) would read as follows:

"(d) for the purpose of coordinating the foreign intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council...."

Assistance to Police or Law Enforcement Operations or Activities

Added
(g)(1)(B) provides that CIA shall not provide assistance of any kind to any agency of the Federal or local government engaged in police, law enforcement or internal security operations and activities unless such assistance is provided with the prior approval of the CIA Oversight Subcommittees of the Committees on Appropriations and the Committees on Armed Services of the Senate and the House of Representatives. Such requirement by approval of the Committees of Congress raises serious constitutional questions.

Illegal Domestic Activities

The provision of the bill relating to illegal domestic activities appears in subsection (g)(1)(C). This provision would preclude the

Agency from engaging in "any illegal activity within the United States." This Agency sees no merit in passing a law forbidding this Agency from doing what it is already forbidden to do under the law of the land. Moreover, the very enactment of such a law would suggest that the Agency has conducted such illegal activities in the past. This suggestion has no foundation in fact. Further, the enactment of the provision could be interpreted as legally condoning such activities if they occurred prior to the provision's enactment.

"Covert Action" Abroad

The provision of the bill relating to "covert action" abroad appears in new subsection (g)(1)(D). While it is proposed as a tightening up of current law, it actually constitutes a specific authorization for the CIA under the direction of the National Security Council to engage in "covert action in any foreign country" with the specific written approval of the oversight committees of the CIA in the Congress. The requirement of prior approval of committees of Congress raises serious constitutional questions. Further, this constitutes a statutory acknowledgement that the United States engages in covert action against foreign nations. Thus, in addition to a constitutional question, the section could be construed as contrary to the United Nations Charter and principles of international law

* ALL the rest of your draft deleted)

and could be a cause for embarrassment in our international relations.

Consequently, if (g)(1)(D) is eliminated, subsection (g)(2) would be unnecessary since it defines terms in subsection (D).

In view of the above, it is recommended that S. 1935 not be favorably acted upon by your Committee.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of S. 1935 in its present form would not be consistent with the Administration's objectives.

Sincerely,

DRAFT

JDM:5 July 1973

(JSW draft modified by insertion of
clause between last two semicolons
in subsection (A))

S. 1935

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled. That section
102 of the National Security Act of 1947, as amended (50 U.S.C. 403),
is amended by adding at the end thereof a new subsection as follows:

"(g)(1) Nothing in this or any other Act shall be construed
as authorizing the Central Intelligence Agency to—

"(A) carry out, directly or indirectly, within the United States,
either on its own or in cooperation or conjunction with any other
department, agency, organization, or individual any police or police-
type operation or activity, any law enforcement operation or activity,
or any internal security operation or activity; Provided, however, that
nothing in this Act shall be construed to prohibit the Central Intelligence
Agency from protecting its installations or conducting personnel
investigations related to performance of its mission; nor from carrying
on within the United States activities in support of its foreign intelli-
gence responsibilities other than police, law enforcement or internal
security activities;

"(B) this wording is deleted on the grounds that it is patently
unconstitutional;

"(C) participate, directly or indirectly, in any illegal activity
within the United States; or

"(D) this wording is deleted on the grounds that it is patently
unconstitutional.

"(2) Deleted as not being necessary since (D) has been eliminated.

of the word "foreign" in the subsection would be preferable to (g)(1)(A) and (B) of S. 1935 and would appear to substantially meet the sponsor's objectives. With the word inserted, subsection 102(d) would read as follows:

"(d) for the purpose of coordinating the foreign intelligence activities of the several Government departments and agencies in the interest of national security, it shall be the duty of the Agency, under the direction of the National Security Council...."

Assistance to Police or Law Enforcement Operations or Activities

Added (g)(1)(B) provides that CIA shall not provide assistance of any kind to any agency of the Federal or local government engaged in police, law enforcement or internal security operations and activities unless such assistance is provided with the prior approval of the CIA Oversight Subcommittees of the Committees on Appropriations and the Committees on Armed Services of the Senate and the House of Representatives. Such requirement by approval of the Committees of Congress raises serious constitutional questions.

Illegal Domestic Activities

The provision of the bill relating to illegal domestic activities appears in subsection (g)(1)(C). This provision would preclude the

and could be a cause for embarrassment in our international relations.

Consequently, if (g)(1)(D) is eliminated, subsection (g)(2) would be unnecessary since it defines terms in subsection (D).

In view of the above, it is recommended that S. 1935 not be favorably acted upon by your Committee.

The Office of Management and Budget advises that there is no objection to the submission of this report and that enactment of S. 1935 in its present form would not be consistent with the Administration's objectives.

Sincerely,

SUGGESTED REVISION OF 102(d)(3)

(3) to correlate and evaluate intelligence relating to the national security, and provide for the appropriate dissemination of such intelligence within the Government using where appropriate existing agencies and facilities: Provided, That the departments and other agencies of the Government shall continue to collect, evaluate, correlate, and disseminate departmental intelligence: Provided further, That the Agency shall not carry out, directly or indirectly, within the United States, either on its own or in cooperation or conjunction with any other department, agency, organization, or individual any police or police-type operation or activity, any law enforcement operation or activity, or any internal security operation or activity: and provided further, That the Director of Central Intelligence shall be responsible for protecting intelligence sources and methods from unauthorized disclosure, and that nothing in this Act shall be construed to prohibit the Central Intelligence Agency from protecting its installations or conducting personnel investigations related to ^{the} performance of its mission; nor from carrying on within the United States activities in support of its foreign intelligence responsibilities other than police, law enforcement or internal security activities.

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either on its own or in cooperation or conjunction with any other
department, agency, organization, or individual any police or police-
type operation or activity, any law enforcement operation or activity,
or any internal security operation or activity: Provided, however, that
nothing in this Act shall be construed to prohibit the Central Intelligence
Agency from protecting its installations or conducting personnel
investigations related to performance of its mission; nor from carrying
on within the United States activities in support of its foreign intelligence
responsibilities other than police, law enforcement or internal security
activities.

L L M

Here's this - 

Almost all of this is ours with no
changes - I have no ^{real} problem with what they have
~~cut off~~ deleted = Problem with the 2 ~~deleted~~;
no